

DLA PIPER LLP (US)

Christopher P. Hall
Rachel Ehrlich Albanese
1251 Avenue of the Americas
New York, New York 10020-1104
Tel.: (212) 335-4500
Fax: (212) 335-4501
Kip.Hall@dlapiper.com
Rachel.Albanese@dlapiper.com

Attorneys for Defendant Banca Arner S.A.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: Fairfield Sentry Limited, et al., Debtors in Foreign Proceedings.	Chapter 15 Case No. 10-13164 (BRL) Jointly Administered
Fairfield Sentry Limited (In Liquidation) et al., Plaintiffs, -against- Theodoor GGC Amsterdam, et al., Defendants.	Adv. Pro. No. 10-03496 (BRL)
Fairfield Sentry Limited (In Liquidation) et al., Plaintiffs, -against- ABN AMRO Schweiz AG, et al. Defendants.	Adv. Pro. No. 10-03635 (BRL) Administratively Consolidated

Fairfield Sentry Limited (In Liquidation) et al.,

Plaintiffs,

-against-

ABN AMRO Schweiz AG, et al.

Defendants.

Adv. Pro. No. 10-03636 (BRL)

Administratively Consolidated

**JOINDER OF BANCA ARNER SA IN THE CONSOLIDATED MEMORANDUM OF
LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO AMEND AND IN
SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND SUPPLEMENTAL BRIEF**

Defendant Banca Arner SA ("Banca Arner"), through its undersigned attorneys, hereby objects to the Plaintiffs' Notice of Motion of the Foreign Representatives for Leave to Amend (*Fairfield Sentry Limited (In Liquidation) et al.*, v. *Theodoor GGC Amsterdam, et al.*, Adv. Pro. No. 10-03496 (BRL), ECF No. 922; *Fairfield Sentry Limited (In Liquidation) et al.*, v. *ABN AMRO Schweiz AG, et al.*, Adv. Pro. No. 10-03635 (BRL) (the "10-3635 Action"), ECF No. 142; *Fairfield Sentry Limited (In Liquidation) et al.*, v. *ABN AMRO Schweiz AG, et al.*, Adv. Pro. No. 10-03636 (BRL) (the "10-3636 Action"), ECF No. 161) and moves to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(5) and 12(b)(6). Banca Arner hereby joins in all portions of the Consolidated Memorandum of Law in Opposition to Plaintiffs' Motion for Leave to Amend and in Support of Defendants' Motion to Dismiss (the "Consolidated Brief" or "Con. Br.").¹

Banca Arner also asserts the following supplemental defenses and arguments.

¹ Capitalized terms not defined herein have the meaning ascribed to them in the Consolidated Brief.

I. The Court Lacks Personal Jurisdiction over Banca Arner

As discussed in the Consolidated Brief, the Liquidators, who bear the burden of establishing that this Court has personal jurisdiction over Banca Arner, have not established a “substantial connection” between the Foreign Defendants, including Banca Arner, and the United States or that the Foreign Defendants “purposefully directed” their conduct towards the United States. *See* Con. Br. at 23-35. Plaintiffs allege that the Court has jurisdiction over Banca Arner because it invested in the Funds, knowing and intending that the Funds would invest substantially all of that money in New York-based BLMIS. *See* 10-3635 Action, Proposed Fourth Amended Complaint ¶ 19; 10-3636 Action, Proposed Fourth Amended Complaint ¶ 19. In this regard, the Complaints allege “some or all of the Redemption Payments were received at, upon information and belief, designated United States-based bank accounts.” *See* 10-3635 Action, Proposed Fourth Amended Complaint ¶ 115; 10-3636 Action, Proposed Fourth Amended Complaint ¶ 123. These allegations, however, are contradicted by the Exhibits to the Complaints, which list no U.S. bank accounts to which the alleged Redemption Payments were made. *See* 10-3635 Action, Proposed Fourth Amended Complaint, Exs. A, B; 10-3636 Action, Proposed Fourth Amended Complaint, Exs. A, B, C. The Liquidators’ allegations are insufficient to establish personal jurisdiction. *See* Con. Br. at 29-35.

II. Plaintiffs Have Not Properly Served Banca Arner Pursuant to Swiss Law and the Hague Convention.

With respect to the Swiss Moving Defendants, including Banca Arner, which is and was at all relevant times a citizen of Switzerland, the Liquidators’ claims should be dismissed for defective service. *See* Con. Br. at 70-75. Here, the Liquidators attempted to serve Banca Arner by international registered mail. *See* Declaration of Francesco Fierli, dated January 25, 2017 (“Fierli Decl.”), ¶¶ 3, 4. Such service is expressly prohibited under Swiss law and the Hague

Convention and Banca Arner never agreed to such service. *See* Con. Br. at 70-75; Fierli Decl. at ¶ 5. Service was therefore ineffective and the Liquidators' claims should be dismissed for defective service.

CONCLUSION

For the reasons set forth above, this Court should deny the Liquidators' Motion for Leave to Amend and dismiss the Complaints with prejudice.

Dated: New York, New York
January 26, 2017

DLA PIPER LLP (US)

/s/ Rachel Ehrlich Albanese
Christopher P. Hall
Rachel Ehrlich Albanese
1251 Avenue of the Americas
New York, New York 10020-1104
Tel.: (212) 335-4500
Fax: (212) 335-4501
Kip.Hall@dlapiper.com
Rachel.Albanese@dlapiper.com

Attorneys for Defendant Banca Arner S.A.